

**AGENDA — June 13, 2000 Business Taxes Committee Meeting**  
***Place of Sale for Leases of Motor Vehicles (Regulation 1803.5, Long-Term Leases of Motor Vehicles)***

<p><b>Action 1 — Consent Item</b></p> <p>Adoption of proposed Regulation 1803.5 to incorporate provisions of Revenue and Taxation Code section 7205.1</p> <ol style="list-style-type: none"><li>1. Place of Use – 1803.5 (a)</li><li>2. Definitions – 1803.5 (b)</li><li>3. Out of State Lessor – 1803.5 (c)</li><li>4. Subsequent Leases, Lease Structured as Series of Short-Term Leases – 1803.5 (d)</li><li>5. Operative Dates – 1803.5 (e)</li></ol>	<p>Adopt proposed new Regulation 1803.5 as agreed upon by industry and staff.</p>
<p><b>Action 3 — Authorization to Publish</b></p>	<p>Direct the publication of the proposed new Regulation 1803.5 as adopted in the above action.</p> <p>Operative Date: The provisions of subdivisions (a)(1)(A-C) and (b) shall apply prospectively only to lease transactions entered into on or after January 1, 1996. The provisions of subdivisions (a)(1)(A-C), as regards a leasing company, and the provisions of subdivision (b)(5) shall apply prospectively only to lease transactions entered into on or after January 1, 1999.</p> <p>Implementation: Upon OAL approval.</p>

**AGENDA — June 13, 2000 Business Taxes Committee Meeting**  
**Place of Sale for Leases of Motor Vehicles (Regulation 1803.5, Long-Term Leases of Motor Vehicles)**

Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Item</b></p> <p>Adoption of proposed Regulation 1803.5 to incorporate provisions of RTC section 7205.1</p> <p>1. Place of Use – 1803.5 (a) Exhibit 4, page 1</p>	<p><u>Regulation 1803.5. Long-Term Leases of Motor Vehicles.</u></p> <p><u>(a) Place of Use.</u></p> <p><u>(1) With respect to the long-term lease of a new or used motor vehicle entered into on or after January 1, 1996, the place of use for the reporting and transmittal of the local use tax shall be determined as follows.</u></p> <p><u>(A) If the lessor is a California new motor vehicle dealer or leasing company as defined below, the place of use of the leased new or used vehicle shall be deemed to be the participating jurisdiction in which is located the lessor's place of business at which the lease is negotiated (as determined under Regulation 1802).</u></p> <p><u>(B) If a lessor who is not a California new motor vehicle dealer or leasing company as defined below purchases the vehicle from a new motor vehicle dealer or leasing company, the place of use of the leased vehicle shall be deemed to be the participating jurisdiction in which is located the place of business of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.</u></p> <p><u>(C) If a lessor who is not a California new motor vehicle dealer or leasing company as defined below purchases a new motor vehicle from a person other than a new motor vehicle dealer, or a used motor vehicle from any source, the place of use of the leased vehicle shall continue to be the participating jurisdiction in which the lessee resides and shall be distributed to that jurisdiction through the countywide pool of the county in which the jurisdiction is located.</u></p> <p><u>(2) The place of use as determined by subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) shall be the place of use for the duration of the lease contract, notwithstanding the fact that the lessor may sell the vehicle and assign the lease contract to a third party.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p>2. Definitions – 1803.5 (b) Exhibit 4, pages 1-2</p>	<p><u>(b) Definitions.</u></p> <p><u>(1) As used in this subdivision, the term “motor vehicle” means a passenger vehicle (designed to carry no more than 10 persons, including the driver), such as an automobile, minivan, or sport-utility vehicle. The term also includes light-duty pickup trucks rated less than one (1) ton. The term does not include a house car.</u></p> <p><u>(2) Regulation 1660 notwithstanding, the term “long-term lease,” as used in subdivision (a), means and includes the lease of a motor vehicle for a term exceeding four months.</u></p> <p><u>(3) Regulation 1660 notwithstanding, the term “lessor,” as used in subdivision (a), means and includes a person who, for a term exceeding four months, leases or offers for lease, negotiates or attempts to negotiate a lease, or induce any person to lease a motor vehicle, and who receives or expects to receive a commission, money, brokerage fees, profit or any other thing of value from the lessee of said vehicle.</u></p> <p><u>(4) The term “dealer,” as used in subdivision (a), means and includes a person who, as defined under Vehicle Code section 285, is engaged wholly or in part in the business of selling motor vehicles or buying or taking in trade, motor vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in motor vehicles, whether or not such vehicles are owned by such person. The term “dealer” does not include a person who is solely engaged in the business of leasing.</u></p> <p><u>(5) The term “leasing company,” as used in this regulation, means and includes a motor vehicle dealer who originates lease contracts with lessees and does not sell or assign such contracts, any place of business of which has annual lease receipts of motor vehicles equal to or greater than \$15 million, calculated for the previous calendar year, without regard to the annual lease receipts of any other of its places of business. Such lessor shall be deemed a “leasing company” for purposes of this regulation unless and until such status is expressly revoked in writing by the Board.</u></p> <p><u>(6) The term “new motor vehicle dealer,” as used in subdivision (a), means a dealer as defined above who, in addition to the requirements of subdivision (b)(4), acquires for resale or lease new and unregistered motor vehicles from manufacturers or distributors of such motor vehicles.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p>3. Out of State Lessor – 1803.5 (c) Exhibit 4, page 2</p> <p>4. Subsequent Leases, Lease Structured as Series of Short-Term Leases – 1803.5 (d) Exhibit 4, pages 2-3</p> <p>5. Operative Dates – 1803.5 (e) Exhibit 4, page 3</p>	<p><u>(7) The provisions of subdivision (a) do not apply to leases of motor vehicles that are considered mobile transportation equipment (MTE) under Regulation 1661, except for pickup trucks rated less than one (1) ton. Although pickup trucks are still considered MTE, the local use tax revenues derived from qualifying leases of pickup trucks rated less than one (1) ton shall be reported pursuant to the terms of subdivision (a).</u></p> <p><u>(8) The “place of business” shall be determined under Regulation 1802.</u></p> <p><u>(c) If the lessor is located out of state and purchases the vehicle from a source other than one listed in subdivision (a)(1) above, the place of use of the vehicle shall remain the residence of the lessee, and the use tax revenue derived from such lease shall be distributed to that place through the countywide pool of the county in which the lessee resides.</u></p> <p><u>(d) The rules regarding local use tax distribution set forth in subdivision (a)(1) above shall be applied each time a motor vehicle is leased for a long term, as defined in subdivision (b)(2) above. As a result, when a lease is terminated and the vehicle is acquired by a new lessee, the local use tax revenue derived from that transaction shall be distributed to the participating jurisdiction entitled thereto under the facts and circumstances of that lease. Where, however, the lease is structured as a series of short-term leases but is in fact a long-term lease, as shown by the course of performance of the parties (for example, same lessor, same lessee, same lease terms), the local use tax revenues derived therefrom shall be distributed to the same participating jurisdiction throughout the duration of the transaction. For example, government agencies frequently structure their long-term leases as a series of one-year leases due to funding restrictions. In that case, the agency shall be treated as bound for the full term notwithstanding any right it may have to terminate the contract in the event that sufficient funds are not appropriated to pay amounts due under the contract.</u></p> <p><u>(e) Operative Dates. Generally, the provisions of subdivisions (a)(1)(A-C) and (b) shall apply prospectively only to lease transactions entered into on or after January 1, 1996. The provisions of subdivisions (a)(1)(A-C), as regards a leasing company, and the provisions of subdivision (b)(5) shall apply prospectively only to lease transactions entered into on or after January 1, 1999.</u></p>

Issue Paper Number 00 - 019



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

## Proposed Regulatory Changes to Clarify Place of Sale for Leases of Motor Vehicles Regulation 1803.5, Long-Term Leases of Motor Vehicles

### I. Issue

Should proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, be adopted to incorporate provisions of Revenue and Taxation Code section 7205.1, *Place of sale: leases of motor vehicles*?

### II. Staff Recommendation

Staff recommends the adoption of proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, to interpret and explain provisions of Revenue and Taxation Code (RTC) section 7205.1, *Place of sale: leases of motor vehicles*. Regulation 1803.5 will incorporate a formal statement of the administrative guidelines currently in place related to provisions of Senate Bill 602, and will include the following interpretations to be used in administering provisions of Assembly Bill 1946:

- For purposes of determining whether the \$15 million annual lease receipts requirement has been satisfied, annual lease receipts shall be calculated for the previous calendar year.
- Where the lessor operates from multiple locations, the lessor qualifies as a leasing company if any one of the locations meet the \$15 million annual lease receipts requirement.
- The leasing company, once qualified to use the reporting procedure provided in this regulation for “leasing companies,” shall remain qualified until the Board notifies the company in writing that it no longer qualifies.
- When the lessor is a new motor vehicle dealer or leasing company and operates from multiple locations, the place of use is the business location where the lease is negotiated. When the lessor is not a new motor vehicle dealer or leasing company, the place of use is the business location of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.

RTC section 7205.1 provides an operative date of January 1, 1996, except with respect to leasing company provisions, which have an operative date of January 1, 1999.

### III. Other Alternative(s) Considered

Do not adopt proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*.

**FORMAL ISSUE PAPER**Issue Paper Number 00 - 019**IV. Background**

Approximately \$2.8 billion in Bradley-Burns sales and use taxes (local taxes) are collected each year. Although they are not state taxes, the Board has contracted to administer each city and county Local Tax program. By the terms of these contracts, the Board has the responsibility of allocating these taxes to the jurisdiction in which the incidence of tax occurs (the “place of sale” or “place of use”) as accurately and economically as possible. Local use taxes must be distributed to the place of use of the property. Transactions that cannot be attributed to a permitized place of business, or for which a special allocation procedure has not been established, are credited to the countywide pool for the county where delivery or use of the property occurs. In the cases of leases, the applicable tax is the use tax. Establishing the “place of use” for motor vehicle leases has been the subject of two pieces of legislation since 1995.

On January 1, 1996, the determined “place of use” for certain long-term leases of motor vehicles changed. As provided by Revenue and Taxation Code (RTC) section 7205.1 (enacted by Senate Bill 602, Stats. 1995, Ch. 676), the “place of use” for certain long-term leases of motor vehicles shifted from the location of the lessee to the location of the new motor vehicle dealer, when specific conditions apply. Staff is proposing to formalize in Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, the provisions of SB 602 as the Board has administered them since January 1996.

RTC section 7205.1 was amended, pursuant to the passage of Assembly Bill 1946 (Stats. 1998, Ch. 140). Amendments to section 7205.1 extended the provisions applying to new motor vehicle dealers to leasing companies under certain conditions. Staff is now proposing to incorporate language into Regulation 1803.5 interpreting the provisions of AB 1946 as the Board has interpreted them since the beginning of 1999.

A copy of RTC section 7205.1 is attached as Exhibit 2.

**Place of Use for Motor Vehicle Leases Prior to Senate Bill 602**

In the case of motor vehicle leases prior to the enactment of Senate Bill 602, the “place of use” for short-term leases was deemed to be the location of the lessor since it was presumed that the lessee would use the property in the city or surrounding area in which the lessor is located, not in the lessee’s home city, if different from the lessor. For long-term leases, the place of use was considered to be the place where the lessee resides or uses the property, whether or not that place is in the city where the lessor is located. “Long-term” leases were defined as in excess of thirty days.

**Senate Bill 602 (1995)**

Pursuant to section 7205.1, a “long-term” lease of a motor vehicle was defined as one in excess of four months, pursuant to the Vehicle Code. In addition, the place of use for the reporting and transmittal of the use tax due on long-term leases of motor vehicles, entered into on or after January 1, 1996, was determined as follows:

1. If the lessor was a new motor vehicle dealer, the place of use of the leased vehicle was deemed to be the participating jurisdiction in which the lessor’s place of business was located.

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2. If a lessor who was not a new motor vehicle dealer purchased the vehicle from a dealer, the place of use of the leased vehicle was deemed to be the participating jurisdiction in which the place of business of the dealer from whom the lessor purchased the vehicle was located.
3. If a lessor who was not a new motor vehicle dealer purchased the vehicle from a person other than a dealer, the place of use of the leased vehicle continued to be the participating jurisdiction in which the lessee resided and was distributed to that jurisdiction through the countywide pool of the county in which the jurisdiction was located.

In essence, the provisions of section 7205.1 that became effective January 1, 1996, while not intended to change the principles of how tax is to be applied to leases of motor vehicles, were intended to direct which participating jurisdiction should receive the local tax revenues due on rental receipts. The basic purpose of SB 602 was to obtain the same distribution of local use tax revenue derived from motor vehicle leases as that which is derived from motor vehicle sales. With the popularity of motor vehicle leases increasing and outright sales decreasing, cities that housed and provided services to auto malls and other such retail establishments noticed a significant decrease in tax revenues. It was hoped through the enactment of section 7205.1 and the resulting shift in deemed "place of use," cities with auto malls would experience a return of revenue originally realized through outright sales of vehicles.

**The Issue of Large Leasing Companies**

On June 24, 1997, the Business Taxes Committee discussed a proposal from the City of West Hollywood that related to a perceived allocation inequity in regard to a large-scale automobile leasing business within the City's jurisdiction. Noting "the Board and Legislature's common goal of focusing local tax revenues at the situs of the conforming jurisdiction bearing the primary servicing burden for the transaction in question," the City presented a draft resolution for consideration by the Board, stating in part, "Effective July 1, 1997, local use tax derived from the lease of new or used motor vehicles will be allocated directly to the conforming jurisdiction in which the sales office of the lessor is located if said sales office reports annual sales from leasing activities of at least \$15 million to the Board." The Committee directed staff to work with interested parties in preparing an analysis on the feasibility and impact of administratively interpreting specified leasing companies as meeting the criteria required under SB 602 to facilitate allocation of the local tax to the situs of these companies.

On October 7, 1997, the Business Taxes Committee again considered the issue originally raised by the City of West Hollywood, as discussed in Formal Issue Paper Number 97-016 prepared by staff. The Committee directed staff to amend Regulation 1803 to provide local tax allocation as proposed in Alternative 2 of the issue paper, which provided, "Amend Regulation 1803 to regard large-scale 'direct' lessor/retailers as new motor vehicle dealers, for purposes of RTC 7205.1, only when such lessors' annual lease receipts, by location, meet the \$15 million threshold." "By location" was intended to refer to each place of business where the annual lease receipts met the desired threshold.

Staff's proposed amendments to Regulation 1803 were placed on the Board's February 26, 1998 Rulemaking Agenda for consideration. The amendments originally contained regulatory language to interpret the provisions of RTC section 7205.1 as enacted by SB 602, and as they had been administered since January 1, 1996. Pursuant to the Board's October 1997 directive, the proposed language had been amended to regard large lessors, as defined, as new motor vehicle dealers. In the meantime, the Cities of West Hollywood and San Mateo were sponsoring legislation that would accomplish through statute what

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the Board was proposing to do administratively. The Board decided to delay revising Regulation 1803, pending the outcome of this legislation, Assembly Bill 1946.

**Assembly Bill 1946 (1998)**

Assembly Bill 1946 provided that the place of use for the reporting and transmittal of the use tax on long-term leases of motor vehicles, entered into on or after January 1, 1999, is determined as follows:

1. If the lessor is a new motor vehicle dealer or “leasing company,” the place of use of the leased vehicle shall be deemed to be the participating jurisdiction in which the lessor’s place of business is located. (“Leasing company” means a motor vehicle dealer that originates lease contracts that are continuing sales and purchases, does not sell or assign its lease contracts, and has annual motor vehicle lease receipts of \$15 million or more per location.)
2. If a lessor who is not a new motor vehicle dealer or qualifying leasing company purchases the vehicle from a new motor vehicle dealer or qualifying leasing company, the place of use of the leased vehicle shall be deemed to be the participating jurisdiction in which the place of business of the person from whom the lessor purchased the vehicle is located.
3. If a lessor who is not a new motor vehicle dealer or a qualifying leasing company purchases the vehicle from a person other than a new motor vehicle dealer or qualifying leasing company, the place of use of the leased vehicle shall continue to be the participating jurisdiction in which the lessee resides. The use tax shall be distributed to that jurisdiction through the countywide pool of the county in which the jurisdiction is located.

AB 1946 contained provisions similar to those considered by the Board for inclusion into Regulation 1803, except that AB 1946 incorporated an operative date of January 1, 1999.

**Interpretations of AB 1946 Provisions**

Some of the provisions of RTC section 7205.1 enacted by AB 1946 regarding leasing companies require interpretation for purposes of administering the law. Staff recommends the following interpretations be used in administering the provisions of RTC section 7205.1 enacted by AB 1946.

**\$15 million Lease Receipts Requirement – Measurement Period**

RTC 7205.1 (d)(2)(C) defines “leasing company” partially in terms of its *annual* lease receipts. However it does not specifically define “annual.” Regulation 1803.5 (b)(5) provides that for purposes of determining whether the \$15 million annual lease receipts requirement has been satisfied, annual lease receipts shall be calculated for the previous calendar year. This methodology is consistent with Regulation 1699.6 (c), *Use Tax Direct Payment Permits* (Requirements for Permit), which allows qualifying taxpayers to use special use tax reporting procedures when a set dollar threshold is met.

**\$15 million Lease Receipts Requirement – Per Location Qualification**

RTC 7205.1 (d)(2)(C) provides that a “leasing company” must have annual motor vehicle lease receipts of \$15 million or more *per location*. The term “per location” is ambiguous. Staff considered and rejected the following “per location” qualification methods as inconsistent with the statute: 1) base qualification on the average receipts of all locations; 2) base qualification on the aggregate receipts of all locations; or



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3) have each location qualify independently. Regulation 1803.5 (b)(5) provides that where the lessor operates from multiple locations, the lessor qualifies as a leasing company if any one of the locations meet the \$15 million lease receipts requirement. The proposed method avoids providing an unwarranted advantage to lessors who do not have multiple locations. It also avoids requiring qualifying lessors with multiple locations to use different reporting methods at different locations, depending on the volume of business at each location.

**Revocation of Qualification**

Since the statute requires the lessor to qualify as a leasing company based partially on annual receipts, the lessor may at some point cease to qualify. In order to provide some certainty for affected companies, Regulation 1803.5 (b)(5) provides that the leasing company, once qualified to use the reporting procedure provided in this regulation for “leasing companies,” shall remain qualified until the Board notifies the company in writing that it no longer qualifies.

**Definition of Place of Use**

The statute does not define place of use when the motor vehicle dealer or leasing company operates from multiple locations. Under the proposed regulation - 1803.5 (a)(1)(A) - when the lessor is a new motor vehicle dealer or leasing company and operates from multiple locations, the place of use is the participating jurisdiction in which is located the place of business where the lease is negotiated, under the provisions of Regulation 1802 (c), *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes* (Allocation of Sales Tax and Application of Use Tax). Under subdivision of 1803.5 (a)(1)(B) of the proposed regulation, when the lessor is not a new motor vehicle dealer or leasing company and purchases the vehicle from one of these entities, the place of use is the participating jurisdiction in which is located the place of business of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.

**Interested Parties Meeting, March 1, 2000**

General agreement was expressed regarding staff’s recommendations for interpreting the provisions of AB 1946. Mr. Al Koch of Municipal Resource Consultants (hereafter, “MRC”) suggested that the provisions of RTC section 7205.1 be interpreted and explained in a new regulation, rather than combining the information into Regulation 1803, *Application of Tax*, as originally proposed by staff. Staff agreed to this suggestion, and is now recommending the use of proposed Regulation 1803.5. Staff also agreed with MRC’s recommendation to delete the reference to Vehicle Code 286 in the regulation, since this Vehicle Code section was not referenced in RTC section 7205.1.

There was some discussion about the how the Board would notify leasing companies that they were no longer qualified to use the “leasing company” reporting procedure provided in Regulation 1803.5. Staff proposes to review the status of qualified companies on a regular basis, and to notify companies who are no longer eligible to use the reporting procedure designated for “leasing companies.” Notification will be by certified mail with a return receipt requested, and will direct the company to stop using the special reporting procedure, effective with the next quarterly sales and use tax return.

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On April 12, 2000, MRC submitted a proposal for alternate language for Regulation 1803.5 (b)(4). The language would delete the reference to Vehicle Code 285, proposed by staff, and replace the term “vehicles” with “motor vehicles.” MRC noted,

Proposed Regulation 1803.5 (b)(4) defines “dealer” for purposes of AB 1946 by reference to Vehicle Code Section 285 which contains certain references that go beyond the evident legislative intent. For example, its literal language excludes “lessors” from the scope of the situs allocation rule enacted in the statute, even though dealers who are lessors of motor vehicles were the central focus of that legislation. Further, Subdivision 285 (a) includes persons dealing in motorcycles in that definition, even though revenue from motorcycle leasing was not intended to be covered by the legislation, and motorcycles are not included in the definition of “motor vehicle” provided in proposed Regulation 1803.5 (b)(1).

MRC’s proposal was discussed at the second interested parties meeting on April 13, 2000. Staff pointed out that the reference to Vehicle Code section 285 (VC 285) was incorporated into the proposed regulation because this code section was referenced in Revenue and Taxation Code (RTC) section 7205.1 (d)(2), on which the regulation is based. VC 285 defines “dealer” in part as “a person not otherwise expressly excluded by Section 286.” Copies of VC 285 and VC 286 are attached as Exhibit 3.

VC 286 provides in part that the term “dealer” does not include, “(i) Any person who is a lessor.” This exclusion seems to contradict RTC section 7205.1’s use of VC 285 (and by reference VC 286) in its definition of “leasing company.” This apparent contradiction is resolved with the realization that it was the Legislature’s intent to exclude anyone solely engaged in leasing motor vehicles from the definition of “new motor vehicle dealer” and “leasing company” for purposes of RTC section 7205.1. MRC and staff agreed to clarify this concept in the regulation by adding the following sentence to Regulation 1803.5 (b)(4): “The term ‘dealer’ does not include a person who is solely engaged in the business of leasing.” (See Exhibit 4.) In addition, MRC agreed with staff that the reference to VC 285 should remain in the regulation in order to incorporate by reference the remaining exclusions contained in VC 286.

MRC’s remaining objection to including a reference to VC 285 was that the definition of “dealer” in VC 285 includes a motorcycle dealer, and motorcycles were not intended to be included within the provisions of RTC section 7205.1. Staff’s proposed definition of “motor vehicle” limits the term to those vehicles clearly intended for inclusion by the Legislature – passenger vehicles and vehicles of a type normally used as a substitute for passenger vehicles, i.e. light-duty pickup trucks:

1803.5 (b) Definitions.

(1) As used in this subdivision, the term “motor vehicle” means a passenger vehicle (designed to carry no more than 10 persons, including the driver), such as an automobile, minivan, or sport-utility vehicle. The term also includes light-duty pickup trucks rated less than one (1) ton. The term does not include a house car.

Subsequent to the meeting with interested parties on April 13, 2000, staff made use of additional suggestions from MRC while continuing to work on refining the text of Regulation 1803.5 to ensure that all explanations were consistent with RTC 7205.1 and with the legislative intent for both SB 602 and AB 1946. Exhibit 4 contains the text of proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*.

**FORMAL ISSUE PAPER**Issue Paper Number 00 - 019**V. Staff Recommendation****A. Description of the Staff Recommendation**

Staff recommends the adoption of proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, to interpret and explain provisions of Revenue and Taxation Code (RTC) section 7205.1, *Place of sale: leases of motor vehicles*. Regulation 1803.5 will incorporate a formal statement of the administrative guidelines currently in place related to provisions of Senate Bill 602, and will include the following interpretations to be used in administering provisions of Assembly Bill 1946:

- For purposes of determining whether the \$15 million annual lease receipts requirement has been satisfied, annual lease receipts shall be calculated for the previous calendar year.
- Where the lessor operates from multiple locations, the lessor qualifies as a leasing company if any one of the locations meet the \$15 million annual lease receipts requirement.
- The leasing company, once qualified to use the reporting procedures provided in this regulation for “leasing companies,” shall remain qualified until the Board notifies the company in writing that it no longer qualifies.
- When the lessor is a new motor vehicle dealer or leasing company and operates from multiple locations, the place of use is the business location where the lease is negotiated. When the lessor is not a new motor vehicle dealer or leasing company, the place of use is the business location of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.

RTC section 7205.1 provides an operative date of January 1, 1996, except with respect to leasing company provisions, which have an operative date of January 1, 1999.

**B. Pros of the Staff Recommendation**

- Promulgates in regulatory form the interpretations the Board has used since it began administering SB 602 (in January 1996) and AB 1946 (in January 1999).
- Provides clear guidelines for staff and industry on the allocation of local tax related to lease receipts from long-term leases of motor vehicles.

**C. Cons of the Staff Recommendation**

Requires regulatory change.

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**D. Statutory or Regulatory Change**

No statutory change required. However, it does require the adoption of new Regulation 1803.5.

**E. Administrative Impact**

A minor administrative impact is expected related to tracking reported lease receipts and notifying leasing companies if they should cease to be qualified to use the “leasing company” reporting procedures provided by Regulation 1803.5. Operations Memo 1036 (January 8, 1996) will be revised to incorporate procedures for implementing AB 1946 beginning January 1, 1999.

**F. Fiscal Impact**

**1. Cost Impact**

Costs related to the new regulation are absorbable.

**2. Revenue Impact**

None. See Revenue Estimate, Exhibit 1.

**G. Taxpayer/Customer Impact**

Proposed Regulation 1803.5 will affect new motor vehicle dealers and leasing companies. Staff will be required to notify these taxpayers of the provisions of the regulation.

**H. Critical Time Frames**

RTC section 7205.1 provides an operative date of January 1, 1996, except with respect to leasing company provisions, which have an operative date of January 1, 1999.

**VI. Alternative 1**

**A. Description of the Alternative**

Do not adopt proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*.

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**B. Pros of the Alternative**

Does not require regulatory change.

**C. Cons of the Alternative**

Fails to provide guidance for staff and industry on the allocation of local tax related to lease receipts from long-term leases of motor vehicles.

**D. Statutory or Regulatory Change**

No statutory or regulatory change required.

**E. Administrative Impact**

None.

**F. Fiscal Impact**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate, Exhibit 1.

**G. Taxpayer/Customer Impact**

Since the motor vehicle leasing industry will not have clear guidance on the allocation of local tax, there is a greater likelihood that taxpayers will not report the allocation of tax correctly.

**H. Critical Time Frames**

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: May 30, 2000



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**PROPOSED REGULATORY CHANGES TO CLARIFY PLACE OF  
SALE FOR LEASES OF MOTOR VEHICLES  
REGULATION 1803.5, LONG-TERM LEASES OF MOTOR  
VEHICLES**

**Staff Recommendation**

Staff recommends the adoption of proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, to interpret and explain provisions of Revenue and Taxation Code (RTC) section 7205.1, *Place of sale: leases of motor vehicles*. Regulation 1803.5 will incorporate a formal statement of the administrative guidelines currently in place related to provisions of Senate Bill 602, and will include the following interpretations to be used in administering provisions of Assembly Bill 1946:

- For purposes of determining whether the \$15 million annual lease receipts requirement has been satisfied, annual lease receipts shall be calculated for the previous calendar year.
- Where the lessor operates from multiple locations, the lessor qualifies as a leasing company if any one of the locations meet the \$15 million annual lease receipts requirement.
- The leasing company, once qualified to use the reporting procedure provided in this regulation for “leasing companies,” shall remain qualified until the Board notifies the company in writing that it no longer qualifies.
- When the lessor is a new motor vehicle dealer or leasing company and operates from multiple locations, the place of use is the business location where the lease is negotiated. When the lessor is not a new motor vehicle dealer or leasing company, the place of use is the business location of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.

RTC section 7205.1 provides an operative date of January 1, 1996, except with respect to leasing company provisions, which have an operative date of January 1, 1999.

**Alternative 1:**

Do not adopt proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*.

**Revenue Estimate**

**Background, Methodology, and Assumptions**

**Staff Recommendation:**

The staff recommendation would incorporate a formal statement of the administrative guidelines currently in place related to the place of sale for long-term leases of motor vehicles. The staff recommendation has no revenue effect.

**Alternative 1:**

The alternative proposal would be to not adopt Regulation 1803.5. This proposal has no revenue effect.

**Revenue Summary**

**Staff Recommendation:**

The staff recommendation has no revenue effect.

**Alternative 1:**

Alternative 1 has no revenue effect

**Preparation**

This revenue estimate was prepared by David E. Hayes, Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Freda Orendt-Evans, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of May 17, 2000

Revenue and Taxation Code Section 7205.1

**7205.1 Place of sale: leases of motor vehicles.**

(a) Notwithstanding any other provision of law, in connection with any use tax imposed pursuant to this part with respect to the lease (as described in Sections 371 and 372 of the Vehicle Code) of a new or used motor vehicle (as defined in Section 415 of the Vehicle Code) by a dealer or leasing company, the place of use for the reporting and transmittal of the use tax shall be determined as follows:

(1) If the lessor is a California new motor vehicle dealer (as defined in Section 426 of the Vehicle Code), or a leasing company, the place of use of the leased vehicle shall be deemed to be the city in which the lessor's place of business (as defined in Section 7205 and the regulations promulgated thereunder) is located.

(2) If a lessor, who is not a person described in paragraph (1), purchases the vehicle from a person as so described, the place of use of the leased vehicle shall be deemed to be the city in which the place of business (as defined in Section 7205 and the regulations promulgated thereunder) of the person from whom the lessor purchases the vehicle is located.

(3) The place of use as determined by this subdivision shall be the place of use for the duration of the lease contract, notwithstanding the fact that the lessor may sell the vehicle and assign the lease contract to a third party.

(b) Except as described in subdivision (a), this section shall not apply if the dealer or leasing company entering into the lease agreement is located outside of California.

(c) (1) The provisions of this section that are applicable to a California new motor vehicle dealer shall apply to lease transactions entered into on or after January 1, 1996.

(2) The provisions of this section, applicable to a leasing company, shall apply to lease transactions entered into on or after January 1, 1999.

(d) As used in this section, the following definitions shall apply:

(1) "City" means a city, city and county, or county.

(2) "Leasing company" means a motor vehicle dealer (as defined in Section 285 of the Vehicle Code), that complies with all of the following:

(A) The dealer originates lease contracts, described in subdivision (a), that are continuing sales and purchases.

(B) The dealer does not sell or assign those lease contracts that it originates in accordance with subparagraph (A).

(C) (i) The dealer has annual motor vehicle lease receipts of fifteen million dollars (\$15,000,000) or more per location.

(ii) For purposes of this subparagraph, only those periodic payments required by the lease shall be considered in determining whether a lessor has annual receipts of fifteen million dollars (\$15,000,000) or more. Amounts received by lessors attributable to capitalized cost reductions or amounts paid by a lessee upon his or her exercising an



## Revenue and Taxation Code Section 7205.1

option shall not be considered in determining whether a lessor has annual lease receipts of fifteen million dollars (\$15,000,000) or more.

(e) If the lessor is not a dealer described in paragraph (1) of subdivision (a), or a person who is described in paragraph (2) of subdivision (a) as purchasing from a dealer, the use tax shall be reported to and distributed through the countywide pool of the county in which the lessee resides.

History. – Added by Stats. 1995, Ch. 676, in effect January 1, 1996. Stats. 1998, Ch. 140, in effect January 1, 1999, deleted comma after “415 of the Vehicle Code)”, and added “by a dealer or leasing company” in subdivision (a); added “California” after “lessor is a”, and added “or a leasing company” after “Code)” in paragraph (1) of subdivision (a); created new paragraph (2) with the former second sentence of paragraph (1) and substituted “paragraph (1) . . . so described,” for this paragraph, purchases the vehicle from a dealer (as defined in Section 285 of the Vehicle Code),” after “described in”, and substituted “person” for “dealer” after “thereunder) is” in subdivision (a); created new paragraph (3) with the former third sentence of paragraph (1) and substituted “subdivision” for “paragraph” after “by this” in subdivision (a); deleted former paragraph (2) of subdivision (a) which provided, “If the lessor is not a person described in paragraph (1) and purchases the vehicle leased from a source other than as described in paragraph (1), the use tax shall be reported to and distributed through the countywide pool of the county in which the lessee resides.”; created new paragraph (1) in subdivision (d) beginning with “City” and substituted “following definitions shall apply:” for “word ‘city’ ” after “section, the” therein; added subparagraph (2) to subdivision (d); and added subdivision (e).

Vehicle Code Sections 285 and 286

**285.** "Dealer" is a person not otherwise expressly excluded by Section 286 who:

(a) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration or a motorcycle subject to identification under this code, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of said vehicle, or

(b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not such vehicles are owned by such person.

**286.** The term "dealer" does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

Vehicle Code Sections 285 and 286

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, "racing vehicle" means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(l) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(1) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) The vehicles sold were donated to the institution or organization.

(3) They meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and have been issued a certificate pursuant to Section 44015 of the Health and Safety Code.

(4) The institution or organization has qualified for state tax-exempt status under

Vehicle Code Sections 285 and 286

Section 23701d of the Revenue and Taxation Code, and federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

JLW: 3-31-00, 4-20-00, 5-2-00, 5-10-00, 5-17-00

Regulation 1803.5. Long-Term Leases of Motor Vehicles.(a) Place of Use.

(1) With respect to the long-term lease of a new or used motor vehicle entered into on or after January 1, 1996, the place of use for the reporting and transmittal of the local use tax shall be determined as follows.

(A) If the lessor is a California new motor vehicle dealer or leasing company as defined below, the place of use of the leased new or used vehicle shall be deemed to be the participating jurisdiction in which is located the lessor's place of business at which the lease is negotiated (as determined under Regulation 1802).

(B) If a lessor who is not a California new motor vehicle dealer or leasing company as defined below purchases the vehicle from a new motor vehicle dealer or leasing company, the place of use of the leased vehicle shall be deemed to be the participating jurisdiction in which is located the place of business of the new motor vehicle dealer or leasing company from which the lessor purchased the vehicle.

(C) If a lessor who is not a California new motor vehicle dealer or leasing company as defined below purchases a new motor vehicle from a person other than a new motor vehicle dealer, or a used motor vehicle from any source, the place of use of the leased vehicle shall continue to be the participating jurisdiction in which the lessee resides and shall be distributed to that jurisdiction through the countywide pool of the county in which the jurisdiction is located.

(2) The place of use as determined by subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) shall be the place of use for the duration of the lease contract, notwithstanding the fact that the lessor may sell the vehicle and assign the lease contract to a third party.

(b) Definitions.

(1) As used in this subdivision, the term "motor vehicle" means a passenger vehicle (designed to carry no more than 10 persons, including the driver), such as an automobile, minivan, or sport-utility vehicle. The term also includes light-duty pickup trucks rated less than one (1) ton. The term does not include a house car.

(2) Regulation 1660 notwithstanding, the term "long-term lease," as used in subdivision (a), means and includes the lease of a motor vehicle for a term exceeding four months.

(3) Regulation 1660 notwithstanding, the term "lessor," as used in subdivision (a), means and includes a person who, for a term exceeding four months, leases or offers for lease, negotiates or attempts to negotiate a lease, or induce any person to lease a motor vehicle, and who receives or

expects to receive a commission, money, brokerage fees, profit or any other thing of value from the lessee of said vehicle.

(4) The term “dealer,” as used in subdivision (a), means and includes a person who, as defined under Vehicle Code section 285, is engaged wholly or in part in the business of selling motor vehicles or buying or taking in trade, motor vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in motor vehicles, whether or not such vehicles are owned by such person. The term “dealer” does not include a person who is solely engaged in the business of leasing.

(5) The term “leasing company,” as used in this regulation, means and includes a motor vehicle dealer who originates lease contracts with lessees and does not sell or assign such contracts, any place of business of which has annual lease receipts of motor vehicles equal to or greater than \$15 million, calculated for the previous calendar year, without regard to the annual lease receipts of any other of its places of business. Such lessor shall be deemed a “leasing company” for purposes of this regulation unless and until such status is expressly revoked in writing by the Board.

(6) The term “new motor vehicle dealer,” as used in subdivision (a), means a dealer as defined above who, in addition to the requirements of subdivision (b)(4), acquires for resale or lease new and unregistered motor vehicles from manufacturers or distributors of such motor vehicles.

(7) The provisions of subdivision (a) do not apply to leases of motor vehicles that are considered mobile transportation equipment (MTE) under Regulation 1661, except for pickup trucks rated less than one (1) ton. Although pickup trucks are still considered MTE, the local use tax revenues derived from qualifying leases of pickup trucks rated less than one (1) ton shall be reported pursuant to the terms of subdivision (a).

(8) The “place of business” shall be determined under Regulation 1802.

(c) If the lessor is located out of state and purchases the vehicle from a source other than one listed in subdivision (a)(1) above, the place of use of the vehicle shall remain the residence of the lessee, and the use tax revenue derived from such lease shall be distributed to that place through the countywide pool of the county in which the lessee resides.

(d) The rules regarding local use tax distribution set forth in subdivision (a)(1) above shall be applied each time a motor vehicle is leased for a long term, as defined in subdivision (b)(2) above. As a result, when a lease is terminated and the vehicle is acquired by a new lessee, the local use tax revenue derived from that transaction shall be distributed to the participating jurisdiction entitled thereto under the facts and circumstances of that lease. Where, however, the lease is structured as a series of short-term leases but is in fact a long-term lease, as shown by the course of performance of the parties (for example, same lessor, same lessee, same lease terms), the local use tax revenues derived therefrom shall be distributed to the same participating

Regulation 1803.5.  
Long-Term Leases of Motor Vehicles

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jurisdiction throughout the duration of the transaction. For example, government agencies frequently structure their long-term leases as a series of one-year leases due to funding restrictions. In that case, the agency shall be treated as bound for the full term notwithstanding any right it may have to terminate the contract in the event that sufficient funds are not appropriated to pay amounts due under the contract.

(e) Operative Dates. Generally, the provisions of subdivisions (a)(1)(A-C) and (b) shall apply prospectively only to lease transactions entered into on or after January 1, 1996. The provisions of subdivisions (a)(1)(A-C), as regards a leasing company, and the provisions of subdivision (b)(5) shall apply prospectively only to lease transactions entered into on or after January 1, 1999.

NOTE: Authority: Section 7051, Revenue and Taxation Code.  
Reference: Sections 7205.1, Revenue and Taxation Code.